

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12608 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MAHEBOOB SIDDIQ CHANDALIYA MUSALMAN

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 12608 of 2002
MS DR KACHHAHAH for Petitioner No. 1
MR KAMLESH KACHHAHAH for Petitioner No. 1
MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner detenu has challenged the detention order dated 30th September, 2002. By the said order, the petitioner is detained as a dangerous person under Prevention of Anti Social Activities Act, 1985. The order of detention is challenged by the petitioner by way of this petition.

2. The activity of the petitioner is highlighted in the detention order. There is reference of about 3 criminal cases which are pending against the petitioner under various provisions of IPC such as Sections 457, 454, 380, 379 and 380. The petitioner is alleged to have committed theft of certain articles and accordingly the detaining authority is of the opinion that he is a dangerous person and he is required to be detained under the preventive detention. The said detention is challenged by the petitioner on various grounds.

3. On behalf of the petitioner, it is argued that so far as aforesaid offences are concerned, these are all offences which relates to law and order situation as they are of individual in nature. It is submitted that it cannot be said that the petitioner committed breach of any public order by committing aforesaid offences of theft etc. In this behalf, reference is made to the decision of division bench of this Court in the case of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI V. POLICE COMMISSIONER, SURAT AND OTHERS, 2000 (1) GLC 393. In the aforesaid case, the division bench, in para 22, has held as under:

"So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

4. Considering the aforesaid fact, in my view, it cannot be said that the petitioner has committed breach of "public order" as these are all cases of individual nature by which the petitioner committed offences under

IPC. In that view of the matter, the order of detention is required to be quashed and set aside and is accordingly set aside.

5. On the aforesaid view of the matter, the petition succeeds and the same is allowed. The order of detention under challenge is quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to cost. Direct service is permitted.

(P.B.Majmudar, J)

Jayanti*